

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KELLY SHAFFSTALL,

Plaintiff,

v.

OLD DOMINION FREIGHT LINE, INC.,

Defendant.

CASE NO. C18-1656-JCC

ORDER

Pursuant to the parties' stipulation and proposed order (Dkt. No. 11), the Court ENTERS the following protective order:

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following stipulated protective order. The parties acknowledge that this agreement is consistent with Local Civil Rule 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle the parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged: (a) personnel files (including financial/payroll/compensation
4 information, timekeeping records, and disciplinary or investigative files, if any) and Personal
5 Health Information for current and former employees of Defendant; (b) Plaintiff’s personnel files
6 and employment documents, including financial/payroll/compensation information, timekeeping
7 records, and disciplinary or investigative files, if any, and Personal Health Information; (c)
8 documents containing or disclosing trade secrets, confidential business information, intellectual
9 property, or competitive strategic initiatives, business plans or analyses, where such information
10 is not readily ascertainable and the party asserting confidentiality has taken reasonable steps to
11 maintain its confidentiality, including timekeeping, payroll, and financial records; (d)
12 information furnished to the disclosing party in confidence by any third party, which information
13 is not known or freely accessible to the general public; and (e) documents containing or
14 disclosing social security numbers, financial account numbers, access codes, passwords, or
15 similar personal private information or security measures.

16 3. SCOPE

17 The protections conferred by this agreement cover not only confidential material (as
18 defined above), but also (1) any information copied or extracted from confidential material; (2)
19 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
20 conversations, or presentations by parties or their counsel that might reveal confidential material.

21 However, the protections conferred by this agreement do not cover information that is in
22 the public domain or becomes part of the public domain through trial or otherwise.

23 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

24 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
25 or produced by another party or by a non-party in connection with this case only for prosecuting,
26 defending, or attempting to settle this litigation. Confidential material may be disclosed only to

1 the categories of persons and under the conditions described in this agreement. Confidential
2 material must be stored and maintained by a receiving party at a location and in a secure manner
3 that ensures that access is limited to the persons authorized under this agreement.

4 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
5 by the Court or permitted in writing by the designating party, a receiving party may disclose any
6 confidential material only to:

7 (a) the receiving party’s counsel of record in this action, as well as employees
8 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

9 (b) the officers, directors, and employees (including in-house counsel) of the
10 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
11 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
12 designated;

13 (c) experts and consultants to whom disclosure is reasonably necessary for
14 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
15 A);

16 (d) the Court, court personnel, and court reporters and their staff;

17 (e) copy or imaging services retained by counsel to assist in the duplication of
18 confidential material, provided that counsel for the party retaining the copy or imaging service
19 instructs the service not to disclose any confidential material to third parties and to immediately
20 return all originals and copies of any confidential material;

21 (f) during their depositions, witnesses in the action to whom disclosure is
22 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
23 (Exhibit A), unless otherwise agreed by the designating party or ordered by the Court. Pages of
24 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
25 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
26 under this agreement; and

1 (g) the author or recipient of a document containing the information or a
2 custodian or other person who otherwise possessed or knew the information.

3 4.3 Filing Confidential Material. Before filing confidential material or discussing or
4 referencing such material in court filings, the filing party shall confer with the designating party,
5 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
6 remove the confidential designation, whether the document can be redacted, or whether a motion
7 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
8 designating party must identify the basis for sealing the specific confidential information at issue,
9 and the filing party shall include this basis in its motion to seal, along with any objection to
10 sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be
11 followed and the standards that will be applied when a party seeks permission from the Court to
12 file material under seal. A party who seeks to maintain the confidentiality of its information must
13 satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the
14 motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied,
15 in accordance with the strong presumption of public access to the Court's files.

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
18 or non-party that designates information or items for protection under this agreement must take
19 care to limit any such designation to specific material that qualifies under the appropriate
20 standards. The designating party must designate for protection only those parts of material,
21 documents, items, or oral or written communications that qualify, so that other portions of the
22 material, documents, items, or communications for which protection is not warranted are not
23 swept unjustifiably within the ambit of this agreement.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
25 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
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unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form: (*e.g.*, paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that contains confidential material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within 15 days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
2 designate qualified information or items does not, standing alone, waive the designating party's
3 right to secure protection under this agreement for such material. Upon timely correction of a
4 designation, the receiving party must make reasonable efforts to ensure that the material is
5 treated in accordance with the provisions of this agreement.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
8 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
10 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the
12 original designation is disclosed.

13 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
14 regarding confidential designations without Court involvement. Any motion regarding
15 confidential designations or for a protective order must include a certification, in the motion or in
16 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
17 conference with other affected parties in an effort to resolve the dispute without Court action.
18 The certification must list the date, manner, and participants to the conference. A good faith
19 effort to confer requires a face-to-face meeting or a telephone conference.

20 6.3 Judicial Intervention. If the parties cannot resolve a challenge without Court
21 intervention, the designating party may file and serve a motion to retain confidentiality under
22 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
23 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
24 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
25 other parties) may expose the challenging party to sanctions. All parties shall continue to
26 maintain the material in question as confidential until the Court rules on the challenge.

1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation that compels
4 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
5 party must:

6 (a) promptly notify the designating party in writing and include a copy of the
7 subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to
9 issue in the other litigation that some or all of the material covered by the subpoena or order is
10 subject to this agreement. Such notification shall include a copy of this agreement; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued
12 by the designating party whose confidential material may be affected.

13 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
15 material to any person or in any circumstance not authorized under this agreement, the receiving
16 party must immediately (a) notify in writing the designating party of the unauthorized
17 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
18 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
19 this agreement, and (d) request that such person or persons execute the “Acknowledgment and
20 Agreement to Be Bound” (Exhibit A).

21 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
22 PROTECTED MATERIAL

23 When a producing party gives notice to receiving parties that certain inadvertently
24 produced material is subject to a claim of privilege or other protection, the obligations of the
25 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
26 provision is not intended to modify whatever procedure may be established in an e-discovery

1 order or agreement that provides for production without prior privilege review. The parties
2 agree to the entry of a non-waiver order under Federal Rule of Evidence 502(d) as set forth
3 herein.

4 10. NON TERMINATION AND RETURN OF DOCUMENTS

5 Within 60 days after the termination of this action, including all appeals, each receiving
6 party must return all confidential material to the producing party, including all copies, extracts
7 and summaries thereof. However, neither party will be required to delete electronic confidential
8 material stored in back-up/archival storage in accordance with its policies, provided that any
9 such retained confidential information will continue to be subject to the terms of this agreement
10 until it is destroyed by the receiving party. Alternatively, the parties may agree upon appropriate
11 methods of destruction.

12 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
13 documents filed with the Court, trial, deposition, and hearing transcripts, correspondence,
14 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
15 work product, even if such materials contain confidential material.

16 The confidentiality obligations imposed by this agreement shall remain in effect until a
17 designating party agrees otherwise in writing or a court orders otherwise.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: February 27, 2019

/s/ Patrick McGuigan

Patrick L. McGuigan, WSBA #28897
3 **HKM EMPLOYMENT ATTORNEYS LLP**
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Attorneys for Plaintiff

8 DATED: February 27, 2019

/s/ Adam Pankratz

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Attorneys for Defendants

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 It is further ORDERED that pursuant to Federal Rule of Evidence 502(d), the production
3 of any documents in this proceeding shall not, for the purposes of this proceeding or any other
4 federal or state proceeding, constitute a waiver by the producing party of any privilege applicable
5 to those documents, including the attorney-client privilege, attorney work-product protection, or
6 any other privilege or protection recognized by law.

7 DATED this 5th day of March 2019.

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11 John C. Coughenour
12 UNITED STATES DISTRICT JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on _____
[date] in the case of *Kelly Shaffstall v. Old Dominion Freight Line, Inc.*, C18-1656-JCC. I agree to
comply with and to be bound by all the terms of this Stipulated Protective Order and I understand
and acknowledge that failure to so comply could expose me to sanctions and punishment in the
nature of contempt. I solemnly promise that I will not disclose in any manner any information or
item that is subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____